

X

GOVERNOR COBB

TO

GOVERNOR MEANS,

ON

THE BOUNDARY

BETWEEN

GEORGIA AND SOUTH CAROLINA.

COLUMBIA, S. C.:
R. W. GIBBES, STATE PRINTER.

1852.

55c

9.75.7

6-296 G

Pamphlet Collection
Duke University Library

MESSAGE NO. 3.

EXECUTIVE DEPARTMENT, }
COLUMBIA, Nov. 26, 1852. }

Gentlemen of the Senate

and House of Representatives :

I received, this morning, a reply from his Excellency, Gov. Cobb, of Georgia, to my letter on the subject of the boundaries of our respective States. I herewith send it to you, and request that you will refer it to the Committee to which the papers on that subject, which were transmitted with my first Message were referred.

J. H. MEANS.

Digitized by the Internet Archive
in 2010 with funding from
Lyrasis Members and Sloan Foundation

GOV. COBB TO GOV. MEANS.

EXECUTIVE DEPARTMENT, }
Milledgeville, October 18, 1852. }

*To His Excellency, Governor Means, Governor of the State
of South Carolina :*

SIR—I received, through Col. Hayne, Attorney General of your State, your communication, calling my attention to the question of the jurisdiction of the State of Georgia over the Savannah River.

On the 25th August, I had an interview with Colonel Hayne, which led to his communication of the 10th of September, furnishing me with his report to your Excellency on the subjects embraced in this question of jurisdiction. I have been prevented from making an earlier reply, and now write under circumstances unfavorable to as full an investigation of the subject as I had intended.

The difficulties which have heretofore existed between the South Carolina Rail Road Company and the city of Augusta, about the crossing of the Savannah River at Augusta by that Company, are the causes alledged for the necessity of this investigation ; and those causes being removed by an amicable arrangement between the parties in interest, it would seem almost unnecessary to pursue the inquiry. The question of the jurisdiction of the Savannah River, however, is of much importance to the State of Georgia, and should not remain in doubt a day longer than is necessary for a proper and permanent decision of it; and I shall, therefore, comply most readily with my promise to Col. Hayne, to submit to your Excellency my views on

that subject, with the reasons which have brought my mind to the conclusions to which it has arrived.

The question is, Has the State of Georgia jurisdiction over the whole of the Savannah River? In other words. Where is the boundary line between South Carolina and Georgia? On the part of Georgia, it is considered that the Savannah River is included within her limits, whilst it is contended by Col. Hayne, on the part of South Carolina, that the middle of the most northern stream is the true boundary line between the States—thus claiming for South Carolina the same rights, in reference to that stream as are granted to Georgia, except where the stream divides—in such cases it is admitted that the right of Georgia extends to the middle of the northern branch. The solution of this question must be found in the proper answer to the three following propositions:

First—What was the boundary of Georgia in this respect, as established by her charter in 1732?

Second—What construction has been placed upon the language used in the charter by the parties in interest?

Third—What powers and rights have been exercised under that charter, and the uniform construction placed upon it?

It is strange that there should be any difficulty in ascertaining the precise language of the charter of 1732; and yet the whole argument of Col. Hayne rests upon a misapprehension of the language of that charter, as I shall endeavor to show: an error into which he very naturally fell, as he finds his authorities in our books. I here insert an extract from the charter of 1732, to show the language employed in describing the boundary and the extent to which it was intended to apply. It is as follows:

“And whereas the said corporation intend to settle a colony, and to make an habitation and plantation on that

part of our province of South Carolina, in America, hereafter described, know ye, that we greatly desiring the happy success of the said corporation, for their further encouragement in accomplishing so excellent a work, have, of our foresaid grace, certain knowledge and mere motion, given and granted, and by these presents, for us, our heirs and successors, do give and grant to the said corporation and their successors, under the reservation, limitation, and declaration hereafter expressed, seven undivided parts, the whole in eight equal parts to be divided, of all those lands, country and territories, situate, lying and being in that part of South Carolina, in America, which lies *from the most northern part* of a stream, or river there, commonly called the Savannah, all along the seacoast to the southwards, to the southern stream of a certain other great water or river, called the Altamaha, and westwardly from the heads of the said rivers, respectively, in direct lines to the South seas.”—*Schley's Digest*, p. 435.

If the above extract be correct, it puts an end to all controversy on the subject—nothing can be clearer or more conclusive. By this provision of the charter of 1832, the boundary line between South Carolina and Georgia is to be found “*at the most northern part*” of the river Savannah. I apprehend that no one will entertain the proposition for a moment, that “the most northern part of a river is to be found in the middle of either the main streams, or where the stream divides, in the middle of the northern branch of it. Upon that point I shall offer no argument, feeling well satisfied that the question will be readily yielded, if it can be made satisfactory to appear that the language which I have quoted from the charter, is the correct version of that instrument. After the most diligent inquiry, which circumstances have permitted me to make, I have been able to find the charter of 1832, given *in extenso*, only in the following works: Schley's Digest, 429; Hotchkiss' Statute Laws of Georgia and State Papers, 20; Mc-

Call's History of Georgia, 1 vol., 329; Stevens' History of Georgia, 1 vol., 476. In each of these books the charter will be found in full, setting forth the boundaries of the colony, as I have already quoted from Schley's Digest. It seems to me that the fact, that the charter wherever found *in full*, contains the same language, should be regarded as conclusive evidence of its correctness, and it ought not to be questioned upon the authority of mere extracts from the original instrument.

In this connection I will refer as briefly as possible to the authorities relied upon by Col. Hayne in support of the proposition, that the boundary of Georgia is limited to the middle of the northern stream of the Savannah river. He says :

"It was in 1730 that Lord Percival, James Oglethorpe, and others, petitioned the Crown for the establishment of a colony in South Carolina. In the report on this petition to the Lords of the Privy Council of December in that year, the boundary recommended was 'the most navigable and and largest branches of the Savannah.'"—*Watkins' Digest*, p. 729.

"In another report to the Privy Council, 'about settling a western boundary to the colony in South Carolina in 1731,' the territory is spoken of as 'between the rivers Savannah and Altamaha.'"—*Watkins' Digest*, p. 730.

It is a sufficient reply to any argument to be drawn from these references to say, that the boundary *was not established*, as recommended by either of these reports.—This fact is admitted by Col. Hayne, who seeks to show that the language of the charter is "from the northern stream of a river commonly called the Savannah," &c., &c. The truth is, that a very strong inference can legitimately be drawn from the several reports made by the Board of Trade to the Lords of the Privy Council (from which Col. Hayne has taken the above extracts) in favor of the claim

of Georgia to the whole of the Savannah river. It will be found upon an investigation of that matter, that on each occasion when the reports were referred back to the Board of Trade, the reference was accompanied with instructions to make the report *more favorable to the petitioners*, on the very question of their proposed boundaries, and hence it is that we find the boundaries, as finally granted in the charter, more liberal to Georgia than was *at first* proposed. It is more than probable that much of the misapprehension on this subject has grown out of the difference between these very reports, and the charter itself, as it was in fact granted.

The next authority relied upon by Col. Hayne is thus referred to by him :

“In the charter of George II., 1732, creating Lord Percival, Oglethorpe and others, ‘ Trustees for establishing the colony of Georgia in America,’ the description of the grant is in these words:—‘ All those lands, countries and territories, situate, lying and being in that part of South Carolina, in America, which lies from the northern stream of a river there, commonly called the Savannah, all along the seacoast to the southward unto the most southern stream of a certain other great river called the Altamaha.’ ”—*Watkins’ Digest*, p. 731.

It is upon this version of the charter, as taken from Watkins’ Digest, that the argument is based, in favor of the claim of South Carolina to the middle of the Savannah river. I have already stated that it differs from the language employed in *all* the books where the charter is given *in extenso*. I have no doubt it was obtained by Watkins from a report made to Congress in 1796, by Charles Lee, Attorney General, in compliance with a resolution of Congress, which required him “to collect, *digest* and report to the next Congress the charters, treaties and other documents relative to, and explanatory of, the title to the land situate

in the south-western parts of the United States," &c., &c. It will not be contended, I trust, that a *digested* extract prepared by Mr. Lee, and furnished to him from a *printed* copy by Mr. Chalmers, of the "Office of 'Trade at Whitehead," should stand as authority against the explicit language of the charter, as contained in every work which professes to give that charter in full. The argument of Col. Hayne proceeds to refer to his next authorities in the following language :

"In Watkins' Digest, page 732, there appears what purports to be 'aⁿ extract from a state of the province of Georgia in 1740,' which contains the expressions of the charter '*from* the most northern stream of the river Savannah.' The 'surrender by the trustees of Georgia to the King of all their rights under the charter,' dated in 1752, uses similar language. The commission to Governor Reynolds in 1754, describes the boundary in the same way ; and again, in the commission to Governor Wright in 1764, we find 'our colony of Georgia, in America,' described as lying '*from* the most northern stream of a river there, commonly called the Savannah," &c.

I have given these extracts at length for the purpose not only of doing the most ample justice to Col. Hayne, but also for the purpose of calling your attention to the striking fact, that the language used in the different extracts vary from each other, as well as from the language of the charter itself, as I have before given it, thus showing that these extracts are nothing more than a mere analysis, which does not profess to give the exact language of the charter ; and certainly none of them were ever prepared in reference to being made the basis of an argument, to set aside the plain and manifest language of an instrument of which they profess to be, nothing more than an analysis or recital.—This remark is peculiarly true of these last extracts, which I have quoted. The surrender by the trustees of Georgia, in

1752, contains a recital of a portion of the charter of 1732, and from that recital the foregoing extract was made. In such an instrument perfect accuracy was neither desired nor contemplated, and hence we find language used which was considered by the authors as expressive of the same idea, though not in the same words of the charter. In my examination of this subject I have found a very pointed and striking proof of the fact, that the language employed in these various extracts, was regarded by the authors as meaning the same thing as the language used in the charter itself. McCall in his history of Georgia, as already referred to, gives the charter in full, and correctly; and yet in speaking of this subject, as will be found on the 10th page of the same volume, uses the very language of the extracts relied upon by Col. Hayne—that is, “which lies from the most northern stream of a river there called Savannah,” &c. Could a more forcible illustration be given, than the one here furnished, of the justice of my criticism? and am I not warranted in accounting for these apparently conflicting authorities upon the hypothesis that the term, “most northern stream,” was used as synonymous with “the most northern part of a stream?” McCall certainly relied upon the correctness of the charter which he published—and if, with that charter before him, he uses the same language with the trustees in their surrender, it can only be accounted for upon the hypothesis I have stated.

The commissions to Governor Reynolds and Governor Wright very naturally followed the recital of the surrender in language as they did in time, and do not therefore require additional comment.

Having now reviewed all the authorities relied upon to ascertain the boundary of Georgia, as established by the charter, I feel justified in concluding that the language used in the charter, as given *in full* by Schley, Hotch-

kiss, McCall and Stevens, is the true and correct version of that instrument, and that, therefore, the boundary of Georgia extends to "the most northern part of the Savannah," and includes, of necessity, the whole of that river within her jurisdiction. If, however, there should still exist doubts as to the exact language of the charter, we are certainly well founded in the conclusion that the invariable construction placed upon the term "the most northern stream," &c., rendered it synonymous with the other language contended for by Georgia. In either event the right of Georgia to the whole of the river is well founded, unless surrendered by some subsequent act, and I now proceed to examine that branch of the subject.

It is urged against the claim of Georgia to the Savannah River that, by the treaty of Beaufort, she has assented to the Savannah River as a boundary line, and yielded any claim which she might have held under the original charter. From that opinion I dissent. I am aware that there is a prevailing idea that this question was settled by the Convention of Beaufort. A careful examination of the subject, however, will show that such is not the fact—and that the treaty of Beaufort left the question of the jurisdiction over the Savannah River just where they found it, and very properly so, for it was not submitted to them, and constituted no part of the controversy which led to that Convention. By that Convention certain rights of navigation on the Savannah River were granted to Carolina, and nothing more. A controversy of an exciting character had grown up between South Carolina and Georgia, in reference to certain territory which was involved in the question of boundary between the two States. Carolina made an appeal to the Congress of the United States on the subject, which led to the appointment of commissioners on the part of the

two States, who met, and, on the 28th April, 1787, concluded the Convention of Beaufort for the settlement of the questions of difference, which had been submitted to them. To a correct understanding of that treaty, its bearings and effect, we must look to *the reasons* assigned for its assemblage, and *the questions* submitted to its decision. For that purpose I call your attention to the preamble of the Convention, in which is set forth, with much care and precision, the purposes for which it met. It is as follows :

“ Whereas, the State of South Carolina did heretofore present a petition to the United States in Congress assembled, and did therein set forth, that a dispute and difference had arisen and subsisted between the States of South Carolina and Georgia concerning boundaries; and the States claiming respectively the same territories, and that the case and claims of the State of South Carolina was as follows, that is to say : “ Charles the II., King of Great Britain, by charter dated the 24th day of March, in the fifteenth year of his reign granted to eight persons as therein named, as lords proprietors thereof, all the lands lying and being within his dominions of America, between thirty-one and thirty-six degrees of south latitude, in a direct west line to the South Seas, styling the lands so described “ The Province of Carolina : ” That on the thirtieth day of June, in the seventeenth year of his reign, the said King granted to the said lords proprietors a second charter, enlarging the bounds of Carolina, viz : from twenty-nine degrees of north latitude to thirty-six degrees, thirty minutes, and from those points on the sea coast west in a direct line to the South Seas : That seven of the said proprietors of Carolina sold and surrendered to George the II., late King of Great Britain, all their title and interest in the said Province, and the share of the remaining proprietor was separated from the King’s, and allotted to him in the north part of North Carolina : That Carolina was afterwards divided into two provinces, called North and South Carolina : That by a charter dated the ninth day of June, George the II., King

of Great Britain, granted to certain persons therein named, all the lands lying between the rivers Savannah and Altamaha, and between lines to be drawn from the heads of those rivers, respectively, to the South Sea, and styled the said colony 'Georgia.' That by a treaty of peace, concluded at Paris on the tenth day of February, one thousand seven hundred and sixty-three, the river Mississippi was declared to be the western boundary of the North American Colonies: That the Governor of South Carolina, in the year one thousand seven hundred and sixty, conceiving that the lands southward of the Altamaha still belonged to South Carolina, granted several tracts of the said lands: That the government of Georgia complained to the King of Great Britain, respecting those grants as being for lands within its limits, and therefore His Majesty, by proclamation, dated the seventh day of October, one thousand seven hundred and sixty-three, annexed to Georgia all the lands lying between the rivers Altamaha and St. Mary's, the validity of the grants passed by the Governor of South Carolina as aforesaid, remaining, however, acknowledged and uncontested, and the grantees of said land, or their representatives, still holding it as their legal estate: That South Carolina claims the lands lying between the North Carolina line, and the line run due west from the mouth of the Tugalo River to the Mississippi, because, as the said State contends, the river Savannah loses that name at the confluence of Tugalo and Keowee Rivers, consequently that spot is the head of Savannah River. The State of Georgia on the other hand contends that the source of the Keowee River is to be considered as the head of the Savannah River: That the State of South Carolina also claims all the lands lying between a line to be drawn from the head of the river St. Marys, the head of the Altamaha, to the Mississippi and Florida, being, as the said State contends, within the limits of its charter, and not annexed to Georgia by the said proclamation of one thousand eight hundred and sixty-two. The State of Georgia, on the other hand, contends that the tract of country last mentioned is a part of that State."—*M. & C. Digest*, p. 662-663.

I have given all of the preamble which is necessary to a

correct understanding of the subject, from which it will be seen that the questions in dispute between Carolina and Georgia, and for the settlement of which this Convention assembled, had no reference to the subject of the jurisdiction of the Savannah river. The concluding paragraphs above quoted point out very clearly the *claims of the two States to certain lands*, which it was contemplated should be adjusted, and in fact were adjusted, by that Convention. At that time South Carolina did not question the right of Georgia to the Savannah river. By an act of the Legislature of this State, of 1783, (three years previous to the meeting of the Convention at Beaufort,) it had been enacted, ordered, and declared, “that the limits, boundaries, jurisdiction and authority of the State of Georgia, do and did, and of right ought to extend from the mouth of the river Savannah *along the north side* thereof, and up the most northern stream or fork of the said river to its head, or source, &c., &c.—Watkins’ Digest, p. 749. Carolina was thus duly notified of the claim of Georgia in this respect; and the urgency with which she had pressed her claims to the lands in dispute, show very clearly that she was no indifferent spectator to the claims of Georgia in this regard. It cannot be supposed that Carolina would have overlooked so important an item in the boundary question as is involved in this question, if she had intended to contest the claim, thus solemnly made by Georgia “*to the north side of the Savannah river.*” The omission to include it in her bill of complaint against Georgia is one of *many* circumstances which conspire, with convincing power to show that, at that time, she recognised the right of Georgia, as set forth in her boundary Act of 1783. It was under these circumstances, and for these purposes, that the Convention of Beaufort met—all of which should be borne in mind in construing its action. Among other articles in that treaty we find the following:

“ARTICLE THE FIRST.—The most northern branch or stream of the river Savannah, from the sea or mouths of such stream to the fork or confluence of the rivers now called Tugalo and Keowee; and from thence the most northern branch or stream of the said river Tugalo, till it intersects the northern boundary line of South Carolina, if the said branch or stream of Tugalo extends so far north, reserving all the islands in the said rivers, Savannah and Tugalo, to Georgia; but if the head spring or source of any branch or stream of the said river Tugalo, does not extend to the north boundary line of South Carolina, then a west line to the Mississippi, to be drawn from the head spring or source of the said branch or stream of the Tugalo River, which extends to the highest northern latitude, shall forever hereafter form the separating limit and boundary between the States of South Carolina and Georgia.”

“ARTICLE THE SECOND.—The navigation of the river Savannah at and from the bar and mouths, along the north-east side of Cockspur Island, and up the direct course of the main northern channel, along the Northern side of Hutchinson’s Island, opposite the town of Savannah, to the upper end of the said island, and from thence up the bed or principal stream of said river to the confluence of the rivers Tugalo and Keowee, and from the confluence up the channel of the most northern stream of Tugalo River to its source, and back again, by the same channel, to the Atlantic Ocean, is hereby declared to be henceforth equally free to the citizens of both States, and exempt from all duties, tolls, hinderance, interruption and molestation whatsoever, attempted to be enforced by one State on the citizens of another; and all the rest of the river Savannah to the southward of the foregoing description, is acknowledged to be the exclusive right of the State of Georgia.”—*M. & C. Digest*, p. 664.

It is claimed that the first of the foregoing articles settled the boundary between the two States, to which I reply, that the preamble to the Convention which purports to give the reasons for its assemblage, shows that the boundaries in this respect was *not a mooted question*. So far as we

are informed, either by documents or tradition, there was no serious difference of opinion on this point between the two States, and the insertion of this article in the treaty can only be regarded as a declaration in favor of the boundary line, *as claimed* by Georgia, and *acquiesced in* by Carolina. The language used in this article differs from that found in the charter, as published *in extenso*. It also differs from the extract as published in Watkins, as well as from the Act of the Legislature of 1785; yet it is virtually the same as that used by McCall, and by the trustees of Georgia in their surrender of their charter to the King, which I have shown was regarded as synonymous with the terms of the original charter. We shall see hereafter strong confirmatory evidence of the correctness of this view. If this first article was intended to alter the boundary line, and change it from the "*most northern part* of the river" to the middle of the stream, it might be well asked where was the necessity for the second article of the treaty, which is quoted above? The object of this article under the construction which I have placed upon the Convention, is manifest. It confers the right of navigation of the Savannah River, upon the citizens of South Carolina, which, it seems, was not *previously* possessed by them. Under a different construction, however, of the Convention, and one which would make the middle of the Savannah River the boundary line, this second article would become nugatory, and we should be unable to assign a satisfactory reason for its consideration.

The inquiry may arise, upon this view of the treaty of Beaufort, why was the first article of this treaty inserted in it, if it was not intended to define the boundary line between the two States, along the stream of the Savannah River? A most satisfactory answer to such an inquiry is furnished by the language of the preamble to the Conven-

tion. That preamble, as before quoted, sets forth as a part of the claim of South Carolina, "That South Carolina claims the lands lying between the North Carolina line and the line run due west from the mouth of Tugalo River to the Mississippi, *because, as the said State contends, the river Savannah loses that name at the confluence of Tugalo and Keowee Rivers, consequently that spot is the head of Savannah River.*" Thus it will be seen that this first article was inserted to dispose of the claim of South Carolina *to the lands* lying above the confluence of the Tugalo and Keowee Rivers. That claim constituted *the only point* of difference between the two States, connected with the Savannah River, and this article adjusts and disposes of that matter. This reference shows, as indeed do all the circumstances connected with that Convention, that the claim of Georgia, as it then existed, "to the north side of the Savannah River," was a conceded point, and not involved in the mooted questions which had led to, and were then adjusted by the treaty of Beaufort.

The position then taken by Carolina, and upon which she founded her claim to the lands in dispute, forecloses the argument now offered in her behalf to an equal jurisdiction over the waters of the Savannah River. If she was right at that time in asserting that the Savannah River terminated at the confluence of the Tugalo and Keowee Rivers, upon the correctness of which assertion her whole claim in this respect vested, then it is not true, as now contended by her that the terms of the charter of 1832, to wit,—“northern stream,” or “the most northern stream,” or “the most northern part of a stream commonly called the Savannah,” was intended to apply to that part of the river where it divided, for below the confluence there was but *one* stream. The only satisfactory solution of this matter is to be found in that uniform construction of the charter of 1732, which gives to Georgia the whole of the Savannah River.

Mr. John Houstoun, one of the commissioners on the part of Georgia, refused to sign the Convention of Beaufort, and in his protest appended to the treaty, (M. & C. Digest, p. 666,) places his refusal upon two grounds. The first it is unnecessary to consider, as it has no reference to the subject of our present investigation. The second, however, bears directly upon it, and exhibits not only the opinion held by Mr. Houstoun in reference to our boundary, but also shows, by clear and unavoidable inference, that no such construction was placed upon the first article of the treaty by the commissioners who made it, as now contended for by those who seek to limit the boundary of Georgia to a thread in the middle of the river. In this protest Mr. Houstoun says:

“Secondly. As to the free navigation of the river Savannah now given up to South Carolina, I conceive this point is, in the first place, not an object of our commission; but if it was, however disposed I might be always to wish an indulgence to a sister State on this head, (which I believe has hitherto been the case,) yet I am not inclined to give that *indulgence* the color of a *right*. Were we settling commercial relations with South Carolina, to permit the free navigation of the river, it might be just and proper, and the title then would depend on and be derived from such agreement; but to yield this point *as a claim*, in the present instance, implies that the *right* has been *ab origine* in South Carolina. Such a position would be inconsistent with my idea of our boundary; for if we hold the sovereignty “from the most northern part of the stream,” it seems to me the exclusive right of navigation follows of course. This is neither a forced or new construction of our charter, but has uniformly been the opinion for a series of years past, of most people in Georgia; and all the documents adduced tend only to show the point has been contested, but never decided on. On the whole, although I should be amongst the foremost to concede to this neighborly privilege, in return for some other perhaps less

valuable to the citizens of South Carolina, yet I should wish to see it held by them as a *grant*, under some restrictions, from Georgia, and not *a right* proved and established at the present meeting.”—*M. & C. Digest*, p. 666–667.

From the language here used by Mr. Houstoun, it will be observed that he was extremely tenacious of the right of Georgia to her boundary line, as set forth in the Act of her Legislature of 1783; and, believing that the *right of navigation* granted to Carolina by the *second article* of the treaty conflicted with that right, he refuses to sign the Convention. He does not consider the declaration of the boundary line, as set forth in the *first article*, as at all objectionable—at least, he makes no objection to it; and had he regarded it as altering the boundary line of the State, he would doubtless have incorporated it in his protest, as an additional and more weighty reason for his refusal to sign the treaty. It is very clear to my mind that neither Mr. Houstoun, nor any other member of that Convention, placed upon the first article of the treaty the construction now sought to be put upon it. This protest of Mr. Houstoun was drawn up when he was fresh from the discussions of the Convention, when he had heard the views presented by the commissioners on both sides. If, on the part of Carolina, it had been claimed, or on the part of Georgia conceded, that the boundary line between the two States had been altered by the first article of the treaty, he would never have omitted from his protest so important an item. His mind, as is shown by the extract I have given, was directed to this particular point, and the only objection he files to this part of the treaty, grows out of the provisions of the *second*, and not the *first*. It is, however, alone upon the provisions of the *first article* that the argument is now based, to sustain the position that, by that Convention, Georgia assented to a change in her boundary line, from the

“most northern part” to “the middle of the Savannah river.”

I apprehend that the argument will not now be changed, and the right of Carolina made to rest upon the second article of the treaty. If, however, it should be attempted, it will be a sufficient reply to say, that all the rights and immunities granted to Carolina by that second article will be sacredly observed by Georgia. They extend to the right *of navigation, and no further*. The boundary line for all other purposes than those of navigation remains *unchanged* and *unaffected*.

If additional arguments were required to sustain the views which I have here presented in favor of the claim of Georgia to the whole of the Savannah river, they would be furnished in the fact that the right of jurisdiction over that river has not only been exercised without question or hindrance for a number of years, but has been acquiesced in by South Carolina. I am not aware that on any occasion Carolina has seriously questioned this right, so long claimed and exercised; but I find in the Congressional history of the country conclusive evidence of her acquiescence in the exercise of it by Georgia. In 1790 Congress passed an Act authorizing Georgia to lay a duty on tonnage for the purpose of clearing out certain obstructions in the Savannah river. Similar acts were passed without objection on the part of South Carolina, as well as *without her assent*, which would not have been the case had the right of jurisdiction over the Savannah river by Georgia been questioned by Congress or *South Carolina*. Acts of the same character were passed by Congress again in the years 1800, 1808, 1814, and 1822, and I have yet to learn of any objections being interposed on the part of South Carolina to these series of legislative recognitions of the claim of Georgia to the whole of the

Savannah river. It is worthy of remark, that during the years 1790, 1791 and 1792, Mr. Pierce Butler, one of the commissioners on the part of South Carolina, of the Convention of Beaufort, was a member of the U. S. Senate. This acquiescence in those acts affords convincing proofs, not only that in his opinion the boundary line of Georgia extended to the *northern part* of the Savannah river, as contained in the charter of 1732, but that the construction which I have placed upon the treaty of Beaufort is the correct one. Mr. Butler was at that time fresh from the deliberations of the Beaufort Convention, and was peculiarly qualified to protect the rights of his State in this regard, if he had considered the passage of these various acts as an infringement of those rights. Knowing, however, as he did, that the *right of navigation* on the part of South Carolina would not be injured, and that *no other right* in this respect had been acquired by that Convention, he very properly acquiesced in the justice and propriety of these enactments. It may, however, be argued that these acts of Congress do not conflict with the right of South Carolina as now put forth. Mr. DeSaussure, one of your Senators in Congress, thinks otherwise. I notice in the debates of the last session of Congress, that when a similar enactment was proposed by one of the Senators of Georgia, it was objected to by Mr. DeSaussure, on the ground that South Carolina claimed equal jurisdiction with Georgia over the Savannah river, thus showing that the objections on the part of South Carolina to these enactments of Congress commenced *pari passu* with her claim. When there was *no claim* there was *no objection*. They are both of a modern date, and I sincerely trust will be of short duration.

Reference is made by Col. Hayne to the language of the Constitution of Georgia of 1798, and an agreement is drawn from the fact, that it varies from the language of the

Act of the Legislature of 1783. Not only does it vary from that Act, but also from the language of the charter of 1732, as well as the language of the Convention at Beaufort, which is confirmatory of the view I have presented, that these different terms of expression, *under the uniform construction placed upon them*, were regarded and used as synonymous. The true meaning of them is to be ascertained from the cotemporaneous and unvarying construction of them.

The view which I have taken and presented of this subject, renders it unnecessary for me to controvert that portion of the able argument of Col. Hayne, which discusses the general principles of law, bearing upon the construction of the terms employed in the various documents under consideration. In the absence of the more practical and satisfactory proofs which I have adduced, we might with propriety fall back upon these abstract principles, but in the present instance such a resort is unnecessary. I conclude, therefore, that the claim of Georgia to the exclusive jurisdiction of the Savannah River is not as "groundless" as it has been supposed to be. It rests as I have shown—

First, Upon the plain and explicit language of the charter of 1732, as it is found *in every book* in which it is given *in extenso* ;

Secondly, Upon the undisputed and undisturbed enjoyment and exercise of the right for a great number of years ;

Thirdly upon the uniform and unvarying construction placed upon the various terms of expression used to define her boundary line ;

Fourthly, Upon the acquiescence of South Carolina in the assertion and exercise of this right, as shown by her long silence and virtual assent to the Acts of Congress referred to ;

Fifthly, By all the circumstances connected with the early history of the question, and the action of the two States, in reference to kindred questions, growing out of and dependent for their settlement upon the construction of the same instrument, which originates this one.

Upon a careful review of the subject, I entertain the hope that your Excellency will be satisfied that the claim of Georgia is well founded, and that her "long undisturbed possession should not now be questioned."

In reference to the rights and privileges, claimed by the city of Augusta, as owner of the bridge at that place, I must regard them as questions more properly appertaining to the Judicial Department. At any rate I do not see that any good can result from an Executive discussion on that point. If it is contemplated to facilitate the intercourse between the citizens of the two States at Augusta, by making the bridge free, it becomes a question for Legislative consideration, and will, by this notice of it, be brought to the attention of the next General Assembly.

I concur most fully in the views presented by Col. Hayne, for encouraging the freest commercial intercourse between the citizens of South Carolina and Georgia.—Whatever may be the opinions of the majority of our citizens on that subject, I am prepared to give my cordial co-operation to any and every movement, which has for its object the extension of the principles of free trade, whether applied to the intercourse of the citizens of neighboring States, or extended to the world at large. The fewer the restrictions placed upon commerce the better for the country; and the principle is right, whether limited to small communities or extended to the commercial intercourse of the world.

How far the General Assembly of this State will be disposed to go in granting the unlimited right of building

bridges across the Savannah river, I am not prepared to say. The effect which the building of such bridges might have upon the navigation of the river, would have much weight in determining their policy in this respect; and my information on that point is not sufficient to justify the expression of any opinion on the subject.

Allow me, in conclusion, to express my own desire, as well as that of our citizens, that the future relations between South Carolina and Georgia shall be of that kind and fraternal character which should ever mark the intercourse of two States so identified in feeling and interest.

In conformity with the suggestion of Col. Hayne's letter, I shall lay this correspondence before the General Assembly of this State at its next regular session.

I have the honor to be

Your Excellency's ob't. serv't.,

HOWELL COBB.



